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September 11, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: April 13, 2006

Case Number: TSO-0378

This Decision concerns the eligibility of XXXXXXXX XXXXX XXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

The individual was granted a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on February 15, 2006, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection l. More specifically, the Notification Letter alleges that the individual has "engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security." 10 C.F.R. § 710.8(l) (Criterion L). The bases for this finding are summarized below.

The Notification Letter alleges that the individual: (1) provided inaccurate information on a Questionnaire for National Security Positions (QNSP) dated June 14, 2004, regarding his indebtedness; (2) has demonstrated a pattern of financial irresponsibility, as indicated most notably by his filing for bankruptcy in 1992 and then failing to file federal and state income tax returns during the period 1996 through 2004; and (3) was subject to an investigation by his employer for improper use of government property and filing inaccurate time and attendance reports.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on April 13, 2006, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called no witnesses. Apart from testifying on his own behalf, the individual called his brother-in-law, supervisor and two co-workers. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel will be cited as "DOE Exh." and those submitted by individual cited as "Ind. Exh."

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in October 1978, and was granted a security clearance in May 1979. The individual maintained his clearance without incident until a periodic reinvestigation conducted in 1998 revealed that the individual had filed for Chapter 7 bankruptcy in 1992, and was continuing to experience financial difficulties. In addition, DOE Security received an incident report from the individual's employer indicating that his computer had been used to access adult material sites on the Internet. The individual was therefore summoned by DOE Security for a Personnel Security Interview (PSI) to address these matters. The information obtained during the background investigation and PSI, conducted on January 20, 1999, is summarized below.

During the January 1999 PSI, the individual explained that from 1987 to 1992, he worked on a special project for the contractor which allowed him to earn a substantial amount of money in overtime pay above his regular salary. During this time, the individual and his family incurred a lot of credit card debt but were able to maintain the payments. However, in the summer of 1992, funding for the project suddenly and unexpectedly went away and the individual was ultimately required to take another, lower-paying job with the contractor. As a result of his substantially reduced income, the individual found that he was unable to meet his debt obligations and decided to file for Chapter 7 bankruptcy in October 1992. The bankruptcy was ultimately discharged in March 1993, in the amount of \$54,000.

The 1998 reinvestigation also revealed that in December 1996, the individual again got into financial difficulty. At this time, the individual had decided to sell his home and purchase a new home. However, his old home remained on the market for a prolonged period of time and was eventually sold for an amount lower than expected. In addition, the mortgage on the individual's new home turned out to be much higher than he anticipated and there was delay in moving into the new home due to a number of structural problems. The individual's income was largely consumed to pay the mortgage and to rectify the structural problems, and his family used credit cards to finance much of their living expenses. On his QNSP dated July 29, 1997, the individual indicated that he was over 90 days delinquent on a credit card debt of \$4000 incurred in February 1997. In mid-1997, the individual contacted a consumer credit counseling service and entered into a debt consolidation program. The amount of the debt consolidated was approximately \$21,000. However, the individual had paid this indebtedness down to \$11,000 by the time of his PSI in early 1999.

During the process of acquiring his new home, it was discovered by the individual that a lien had been placed on the property in April or May 1997 by the Internal Revenue Service (IRS), as a result of his failure to file federal income tax returns for years 1991, 1992 and 1993. The individual explained during the January 1999 PSI that he mistakenly thought that if you were due a refund it did not matter when or if you filed a return. However, the individual was informed by the IRS that he is required to file

a return irrespective of whether he is due a refund. In late 1996, the individual was sent a letter by the IRS informing him that he owed back taxes amounting to approximately \$42,000 for tax years 1991-93. Upon filing his federal income tax returns for those three years in late 1996, the IRS determined that the individual was entitled to refunds totaling approximately \$1000. The individual indicated during the January 1999 PSI that he believed that the IRS released the lien on his property in late 1997.

During the January 1999 PSI, the Personnel Security Specialist also admonished the individual that he is obligated to file his income tax returns on a timely basis regardless of whether he owes a tax payment. The Personnel Security Specialist further explained that a DOE security concern is raised when an individual fails to file income tax returns as required by law, and inquired whether the individual had filed his tax returns for the years subsequent to 1993. The individual indicated that he had filed his tax return for 1994 and 1995, but had not yet filed his returns for 1996 and 1997. The individual assured the Personnel Security Specialist, however, that he would be filing those returns within the next few months.

The individual's 1998 reinvestigation also uncovered an incident report in his employer's records, dated September 18, 1998, indicating that the individual's computer had been used to access a number of adult material sites on the Internet. The individual denied accessing the sites himself. The investigation performed by his employer determined that others may have had access to the individual's computer during the time period in question. Since it was unclear whether the individual had accessed the sites, he was not given a reprimand.

Following the January 1999 PSI, DOE Security determined that no further action was required with regard to the individual's finances or the matter regarding the improper use of his computer. The individual's security clearance was therefore continued in March 1999.

However, the 2004 reinvestigation of the individual's eligibility for access authorization uncovered new derogatory information relating to the individual's conduct in the workplace and financial responsibility. Pursuant to this background investigation, DOE Security received an incident report from the individual's employer indicating that in November 2003, the individual was again investigated for possible misuse of government property when sexually explicit material was found on his computer. In addition, the individual was investigated for possibly misrepresenting his attendance at work in December 2003.

With regard to his finances, the individual represented in his QNSP dated June 14, 2004, that in the preceding seven years he had not been over 180 days delinquent on any debts. However, DOE Security obtained a credit report dated August 6, 2004,

reflecting three collection "charge-off" accounts totaling \$1651. The individual further indicated in his June 14, 2004 QNSP that in the preceding seven years he had not had a lien placed on his property. During a PSI conducted on January 20, 1999, however, the individual stated that he discovered in 2002 that the IRS had placed a \$350 lien on his property. In addition, the individual admitted during this PSI that he had filed no federal or state income tax returns for the period 1996 through 2004.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criterion L, Unusual Conduct

In the Notification Letter, DOE Security asserts it suspended the individual's security clearance based upon its finding that he has "engaged in unusual conduct . . . which tends to show that [he] is not honest, reliable, or trustworthy, or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation, or duress which may cause [him] to act contrary to the best interest of the national security." 10 C.F.R. § 710.8(l) (Criterion L). The specific concerns itemized in the Notification Letter fall within two categories: first, an incident report dated May 24, 2004, indicates that the individual was investigated by his employer for improper use of his computer and misrepresenting his work attendance; and second, since filing for bankruptcy in 1992, the individual has continued to display a pattern of financial irresponsibility. See DOE Exh. 1 (Statement of Charges). In the latter regard, information obtained by DOE Security during its reinvestigation of the individual indicates that in recent years the individual had three collection "charge-off" accounts totaling \$1,651, a tax lien was placed on his property in 2002, and that the individual did not file his federal or state income tax returns for the period 1996 through 2004. *Id.*

I have concluded that DOE Security correctly invoked Criterion L in this case. The misuse of government property and the misrepresentation of work attendance raise serious issues regarding the individual's honesty, reliability and trustworthiness. See, e.g., Personnel Security Hearing, Case No. VSO-0435, 28 DOE ¶ 82,804 (2001). Similar concerns are raised by the individual's failure to subsequently maintain his finances in a responsible manner. "Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Guideline F: Financial Considerations, Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, December 29, 2005, at 9; see Personnel Security Hearing, Case No. VSO-0380, 28 DOE ¶ 82,770 (2000); Personnel Security Hearing, Case No. VSO-0520, 28 DOE ¶ 82,862 (2002). It has also been found by Hearing Officers that not filing tax returns and not paying taxes on a timely basis raise serious security concerns. See, e.g., Personnel Security Hearing, Case No. VSO-0081, 25 DOE ¶ 82,805 (1996); Personnel Security Hearing, Case No. VSO-0091, 26 DOE ¶ 82,755 (1996). Accordingly, I turn to whether the individual has presented sufficient mitigating evidence to overcome these security concerns.

B. Mitigating Evidence

1) Workplace Behavior

In early 2004, the individual's employer initiated an investigation into allegations that the individual may have misused his government computer and falsified time and

attendance reports. See DOE Exh. 7.^{2/} With regard to his computer, the investigating official found sexually derogatory pictures located in a folder time-stamped December 9, 1998. *Id.* at 9. The official also found pictures of the individual's family. *Id.* With regard to his attendance, it was found that on a number of days, from June 2003 through January 2004, the individual reported nine hours regular duty, but there were no badge reader entries to the individual's work building. *Id.* at 11-12.

During the investigation, the individual denied that he had ever used his computer to view sexual material and stated that he did not know how it got there. The individual speculated that the material might have been left there from an incident which occurred in 1998, when the individual was investigated but ultimately cleared for having sexually explicit material on his hard drive. *Id.*^{3/} The individual stated that the family pictures were on his computer so he could use them as background screens. Regarding his attendance reporting, the individual explained that under the system in place in 2003, he was required to report his time two weeks in advance which sometimes caused confusion when he was required to retroactively amend his time sheets. The individual maintained, however, that "if there are days when he reported 9 hours regular but there was no badge reader entries it might be because he followed someone into the building after they used the badge reader." *Id.* at 12.

In his report issued on May 24, 2004, the investigating official found that the individual misused government property by having unofficial material on his computer. *Id.* at 2. In addition, it was determined that the individual misreported his attendance on December 4 and 10, 2003, by recording nine hours regular duty for those days but then subsequently calling his group office administrator to report that he would not be at work. The investigating official was unable to determine whether the individual misreported his attendance for 13 other days since his supervisor confirmed

^{2/} The investigation was initiated in November 2003, when the individual's group leader became concerned that the individual might have been abusing his authority to purchase materials for the contractor, having received a report that he was "hoarding" items in his office. See DOE Exh. 7 at 1. Upon looking into this, the group leader noticed that the individual had a large number of CDs and Zip disks on his desk which prompted the group leader to ask the individual to open different files on his computer. The group leader found that the individual had unofficial material on his computer. *Id.* The group leader then requested that the contractor's audits and assessment team review the individual's procurement activities, and investigate possible misuse of his government computer as well as allegations that the individual had misrepresented his time and attendance. *Id.* at 2. The matter of the individual's procurement activities were not identified as a security concern in the Notification Letter, and therefore will not be further discussed in this Decision.

^{3/} Pursuant to the 1998 investigation, it was determined that other persons may have had access to the individual's computer and he was exonerated. See DOE Exh. 10.

the possibility that the individual may have had no badge reader entrances for those days because he entered the building behind someone else. Id.

Ultimately, on August 31, 2004, the individual received a Written Counseling from his employer. DOE Exh. 6. Regarding the misuse of his computer, the Written Counseling acknowledged that “[t]he material discovered was old and may have been remnants from the previous incidents when your computer was not fully secure.” Id. at 1. The Written Counseling further directed the individual to make all appropriate corrections to his time and attendance records. Id. at 1-2. Finally, the Written Counseling warned the individual that “your past behavior in these incidents is unacceptable and will not be tolerated in the future [and, a]ny further behavior of this nature will result in further progressive disciplinary action, up to and including termination.” Id. at 2.

At the hearing, the individual reasserted that he does not know how the sexual material was placed in his computer, and that he has never visited the websites from which the material was obtained. Tr. at 99. According to the individual, the only material he placed on his computer were pictures of his family that he intended to use as a scrolling screen saver. Tr. at 101-02. The individual also claimed innocence with regard to his reporting of time and attendance during the period examined by the investigating official. The individual asserted that he checked his attendance on the dates scrutinized “and they were all correct, except for the two dates that were mentioned.” Tr. at 103. With respect to the two dates (December 4 and 10, 2003) cited in the investigation report, the individual maintained that he was required to report his attendance two weeks in advance and the failure to retroactively adjust his time sheet was the result of an administrative oversight by the group office. The individual testified: “I’d called into the group office and told them that I was sick on those two days, and when I called in to report that I was sick those two days, I asked the office administrator, ‘Would you please go in and change my time so that it reflects that I’m out sick that day’ . . . If anything, that’s an error in the group office administration somewhere.” Tr. at 103-04.

I have duly considered the security concerns raised under Criterion L regarding the individual’s workplace conduct, and I have determined that the individual has adequately mitigated these concerns. In two separate investigations into the individual’s allegedly improper use of his computer, the investigating official determined that it was inconclusive whether the individual was responsible for retrieving the sexual material found on his computer. See DOE Exhs. 6 and 10. Similarly, the record is inconclusive regarding whether the individual intentionally misrepresented his work hours in December 2003. The individual’s supervisor testified at the hearing that there were considerable time and attendance reporting discrepancies during the time period in question as a result of the requirement that employees report their time up to two weeks in advance. Tr. at 61-62. The supervisor testified that the system has since been changed. Tr. at 64.

2) Financial Irresponsibility

The individual declared Chapter 7 bankruptcy in October 1992.^{4/} In March 1999, the determination was made to continue the individual's security clearance despite the bankruptcy and findings during his 1998 reinvestigation that in 1997, the individual had accrued debts requiring a \$21,000 debt consolidation and had a lien placed on his property by the IRS for failing to timely file income tax returns for the three-year period 1991-93. However, the Notification Letter raises additional concerns with regard to the individual's financial responsibility, uncovered during his 2004 reinvestigation: (1) an August 2004 credit report obtained by DOE Security shows that in recent years, the individual had three collection "charge off" accounts totaling \$1,651; (2) in 2002, a \$350 lien was placed against the individual's property by the IRS; and, (3) the individual had not filed federal or state income tax returns from 1996 to 2004. These matters are addressed separately below.

a. "Charge-Off" Accounts

The August 2004 credit report obtained by DOE Security shows three delinquent accounts: (1) a furniture company "charge off" in the amount of \$101, (2) a jewelry store "charge off" in the amount of \$1,375, and (3) a collection agency account in the amount of \$175. See DOE Exh. 5. During the November 2005 PSI, the individual stated that the "charge off" entries on his credit report are erroneous and that he has remained current in paying his charge accounts. DOE Exh. 3 at 22-27. The individual explained that the original amount of the jewelry store account was \$1375, and that he completed all payments but the jewelry store apparently failed to give him proper credit for a cash installment payment made by his wife at the store. *Id.* at 24-25. The individual ventured that the \$175 collection agency account was perhaps the result of a speeding ticket he had forgotten to pay. *Id.* at 27-29.

At the hearing, the individual presented updated credit reports, dated July 2006. In these credit reports, the \$101 furniture company "charge off" no longer appears. See Ind. Exh. 1. While the jewelry store "charge off" still remains, I find upon examining the new credit reports supplied by the individual that the original amount of the account was \$1375 but that the amount of the "charge off" was the \$175 referred to the collection agency. See *id.* The reports further show that the \$175 was paid in July

^{4/} Bankruptcy is a legal means for resolution of financial problems, and an individual may become free of debt by virtue of a bankruptcy. As we have noted in prior decisions, however, this does not mean that there are no DOE security concerns related to the individual's financial behavior leading to the bankruptcy or efforts to regain financial stability subsequent to the bankruptcy. See, e.g., *Personnel Security Hearing*, Case No. TSO-0026, 28 DOE ¶ 82,925 (2003); *Personnel Security Hearing*, Case No. VSO-0520, 28 DOE ¶ 82,862 (2002).

2002. During his testimony, the individual remained adamant that the jewelry store “charge off” listed on his credit report is a mistake and that he is working with an attorney to have his credit report cleared. Tr. at 68-69. The individual submitted a letter and affidavit from the attorney verifying that the attorney has contacted the jewelry store and is taking steps to have the jewelry store “charge off” removed from the individual’s credit reports. Ind. Exh. 2.

Having duly considered this matter, I have determined that the individual has adequately mitigated the concerns regarding the “charge off” accounts revealed in his August 2004 credit report. There is a discrepancy in the information provided by different credit report services regarding the existence of a \$101 furniture store “charge off” account. While the jewelry store “charge off” does appear in the various credit reports, it is apparent that the amount of the “charge off” was no more than \$175 which was ultimately paid by the individual. Moreover, I find plausible evidence to support the individual’s assertion that this “charge off” was the result of improper accounting by the jewelry store.^{5/}

b. Filing of Tax Returns

The 2004 reinvestigation of the individual revealed that he had filed no federal or state income tax returns since filing his 1995 tax year return in 1996. During the November 2005 PSI, the individual acknowledged that he had not filed tax returns for tax years 1996 through 2004, over a dispute with the IRS regarding money the individual believed was owed him from tax years 1991 through 1995. See DOE Exh. 3 at 11-12. As an outgrowth of this dispute, the individual stated that he discovered in 2002, in the process of refinancing his home, that the IRS had placed a \$350 lien on his property in 1997.^{6/} The individual explained: “[W]hen I first filed those [returns] they owed me a small amount, I’m gonna say, less than \$100. . . . [I]t was like four to six months later I get another letter saying that they looked over these things and that I actually owed them like \$300. . . . And I called ‘em again and I said I want some kind of explanation, you know, written down that shows me how you, how you came up with

^{5/} The Notification Letter also alleges that the individual may have been dishonest in failing to disclose the “charge off” accounts on his June 2004 QNSP, and also failing to disclose a IRS tax lien on his property, examined below. In this regard, I find that the individual did not intentionally withhold the information regarding the “charge off” accounts since he was not aware of their existence on his credit report. I further find that the IRS lien was placed on the individual’s property in April 1997, beyond the seven years specified by the QNSP, and therefore the individual may have honestly believed that he was not obligated to report the lien on the QNSP. See Tr. at 71-72, 74.

^{6/} At the hearing, the individual clarified that the amount of the IRS lien was actually \$777, and the \$350 figure he gave at the PSI was an estimate based on faulty recollection. Tr. at 71.

this number. And still didn't get anything from 'em, so I just let it, you know, I just let it go over time." Id. at 12-13.

During the November 2005 PSI, the individual further expressed his mistaken belief that he was not obligated to file tax returns for years 1996 through 2004, once he determined that he did not owe any money for those years. The individual stated: "I, you know, would fill out my forms, make sure that I didn't owe any money and just didn't bother to file 'cause, 'cause I was gonna say, well I'll just make them wait. Since they're not sending me what I requested of them I'm not gonna bother – filing the thing. . . . [O]n many occasions when I'd call 'em and say, uh, where does it say when you have to file your taxes if you don't owe any money. And they just, the only answer I ever got out of any of the people that I talked to is this, well you have to file your [taxes] you know, you have to file, but they won't tell you when." Id. at 14. The Personnel Security Specialist responded immediately by informing the individual that he is required by law to file his tax return each year, irrespective of whether he owes any taxes. See id.

At the hearing, the individual reiterated his purported reason for not filing his federal income tax returns, stating that "I couldn't get them to give me a hard copy of how they came up with the \$777 that I owed them. That was part of my reasoning for just not filing my tax returns." Tr. at 79. The individual claimed that "for the most part, I was under the impression that if you did not owe any taxes, then the filing date was not all that significant. That was the impression I was under." Tr. at 92.

The individual now acknowledges that his decision to not file his tax returns "was a foolish thing to do," Tr. at 84, and he has finally moved to file his delinquent tax returns. At the hearing, the individual adduced copies of his filed federal tax income returns for years 1996 through 2005. Ind. Exhs. 5 through 10. The individual also presented copies of his filed state tax returns for the same period. Ind. Exh. 12. In addition, the individual presented documentary evidence showing that he paid the \$777 IRS tax lien on his property in February 2003, as a condition to acquiring a refinancing of his home mortgage. See Ind. Exh. 4. The individual testified that he now realizes that trying to fight a battle with the IRS by refusing to file his tax return was poor judgment on his part. The individual appeared sincere in his contrition during his testimony: "[O]ne way I could state it is that I need to choose my battles more wisely . . . [Y]ou can't fight the IRS regardless of whether they are right or wrong . . . I just lost my train of thought. . . . That was very costly and very poor judgment." Tr. at 105-06. According to the individual, he forfeited approximately \$7000 in refunds by failing to file his tax returns on a timely basis. Tr. at 106.^{7/}

^{7/} Documentation supplied by the individual indicates that the IRS denied the individual's claims for refunds for tax years beyond three years of filing. For instance, an IRS letter
(continued...)

I have carefully considered the testimony of the individual, and I commend the individual for having now filed his delinquent income tax returns. Nonetheless, I am not persuaded that the individual has sufficiently mitigated the concerns of DOE Security with respect to this matter.

The individual was admonished by the Personnel Security Specialist during his January 1999 PSI that not filing his income tax returns raised a serious security concern, and was instructed that he was obligated to file his returns whether he owed any money or not. At that time, it was discovered that the individual had previously withheld filing his income tax returns for the three year period 1991 through 1993 over a dispute with the IRS, and was delinquent in filing his 1996 and 1997 returns. See DOE Exh. 8 at 19-20, 28-29. The Personnel Security Specialist stated, in part, “[T]hat’s something that we take pretty seriously, as you know, when people don’t file their taxes, whether or not, you know, they are due a refund or whether they owe money.” Id. at 30. The individual also acknowledged during the PSI that he had been given the same instruction by the IRS. Id. at 20. The individual assured the Personnel Security Specialist that he would file his delinquent 1996 and 1997 returns: “I’m gonna shoot for mid-March [1999]. I’ll try and get ‘em all into ‘em.” Id. at 29.

However, during the reinvestigation of the individual conducted in 2004 and 2005, it was discovered that the individual had not only failed to file his 1996 and 1997 tax returns, as he had assured, but also that he had not filed tax returns for 1998 through 2004. During the November 2005 PSI, the individual (I) again committed to filing his tax returns, while the Personnel Security Specialist (PS) noted that the individual had made the same commitment several months earlier to the investigator:

PS: Could you tell me what your future intentions are in regards to handling your financial situation, including your tax issues?

I: Well I’m in, right, right now I’m in the process of filling out all the paperwork on my taxes, uh, 2000, uh, 2004 is complete. I just need to double check the numbers and, and go ahead and mail it in and I’ll be, doing the 2003, uh, probably within the next month and then, uh, in 2002 and 2001 and I’ll work my way backwards, with the aid of, uh, TurboTax software which I just recently purchased

7/ (...continued)
submitted by the individual indicates that he was denied a refund of \$2,781 for 2001 because the individual did not file his 2001 tax return until April 2006, beyond the three-year requirement. See Ind. Exh. 5.

PS: But didn't you tell the investigator, uh, back in like June [2005] that within the next month you were gonna be completing your taxes?

I: Uh, that's, I might have.

DOE Exh. 3 at 35. The documentation submitted by the individual at the hearing shows that, ultimately, the individual did not file his federal income tax returns for tax years 1996 and 1997 until June 2006 (see Ind. Exhs. 10, 11), did not file his federal tax returns for tax years 1998 through 2004 until April 2006 (see Ind. Exhs. 5, 7-9), and did not file his 2005 return until July 2006 (see Ind. Exh. 6). The individual's documentation further shows that he did not file his state tax returns for 1996 through 2005, until June 2006. See Ind. Exh. 12.

Thus, it is apparent from the record of this case, that despite the warnings given to the individual in January 1999 and November 2005, the individual did not become serious about correcting his tax problems until after his security clearance was suspended and the Notification Letter issued in February 2006. In a similar case, the Hearing Officer determined, in pertinent part, as follows:

After examining the record, I find that the Individual has failed to mitigate the security concern presented by his failure to file income taxes. While I commend the Individual for beginning to rectify his delinquent tax situation, he only did so after DOE Security brought these facts to his attention . . . I also find the Individual's attitude towards his tax filing failures extremely troubling. For example, the Individual felt that because he was eligible to claim certain deductions, it did not matter that he had not filed a tax return. . . . The Individual therefore appears to minimize the seriousness of his failure to file federal tax returns.

While in a recent case an OHA Hearing Officer has determined that the security concerns raised by failure to file tax returns were mitigated by payment, I do not find that the security concern has been mitigated in this case. Unlike that case, Personnel Security Hearing (Case No. VSO-0069), 25 DOE ¶ 82, 795 (1996), which involved only three years of non-filing, the case at issue involves a person whose problems are long-standing and whose period of timely filing since the delinquency period are relatively few in comparison. . . . Therefore, I am not convinced that the Individual truly understands the importance of obeying federal laws and I am not certain that he will follow security regulations at all times.

Personnel Security Hearing, Case No. VSO-0091, 26 DOE ¶ 82,755 at 85,534-35 (1996); see also Personnel Security Hearing, Case No. VSO-0538, 28 DOE ¶ 82,876 at 86,089 (2002) ("lack of interest and effort, over a lengthy period, in dealing with his taxes is

incompatible with the standards required of those who hold access authorization”). These considerations apply with equal force in the present case. The individual was warned of the seriousness with which DOE Security viewed the intentional, delinquent filing of his income tax returns. Rather than responsibly addressing the matter, the individual chose to exacerbate the situation by not filing his tax returns for several more years, without reasonable justification.

At the hearing, the individual appeared to be genuine in testifying that he now fully understands the importance of filing his tax returns. See Tr. at 83-84, 105-06. Notwithstanding, in prior cases involving financial irresponsibility, Hearing Officers have held that “[o]nce an individual has demonstrated a pattern of financial irresponsibility, he must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely.” Personnel Security Hearing, Case No. VSO-0520, 28 DOE ¶ 82,862 at 86,023 (2002), citing Personnel Security Hearing, Case No. VSO-0108, 26 DOE ¶ 82,764 at 85,699 (1996). The record of this case shows that the individual has not timely filed his federal income tax return for more than ten years, including his most recent 2005 return. Under these circumstances, and in view of the individual’s failure to heed previous warnings, I cannot find that the individual has sufficiently mitigated the security concerns associated with the delinquent filing of his income tax returns.^{8/}

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has not sufficiently mitigated the specified security concerns. I therefore do not find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access

^{8/} In addition, an unresolved concern remains with regard to the individual’s state income taxes. As indicated above, the individual presented evidence at the hearing that in June 2006, he filed his state tax returns for 1996 through 2005. Ind. Exh. 12. However, a document from the state tax authority (dated August 3, 2005) submitted by DOE Counsel at the hearing, states that a search of its databases “found no information that would indicate that [the individual] has ever filed [state] taxes. [The state official] estimated the databases go back at least 30 years.” DOE Exh. 18. At the hearing, the individual insisted that the information provided by the state tax authority is incorrect and asserted that he has contacted the state tax authority to clarify their records. Tr. at 89. Nonetheless, as of the time of the hearing, a doubt remains whether the individual has rectified the issues relating to the filing of his state income tax returns for years prior to 1996.

authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the provisions set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: